

# State of Wisconsin\Government Accountability Board

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JUDGE TIMOTHY L. VOCKE  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

## Wisconsin Government Accountability Board

212 East Washington Ave.  
Madison, Wisconsin  
May 21, 2013  
9:00 a.m.

### Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Testing Protocols for Voting Equipment	3
B. Requested Attorney General's Opinion on Elections and Open Meetings	4
C. Addressed Clerks' Concerns Task Force Recommendations	5
D. Approved Changes to Manual for Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities	8

Present: Judge Timothy L. Vocke, Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas H. Barland, Judge Thomas Cane and Judge David G. Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Michael Haas, Shane Falk, Ross Hein, Sharrie Hauge, Steve Pickett, Brian Bell, David Buerger, Sherri Ann Charleston, Diane Lowe, Sarah Whitt, Zach Robinson, and Reid Magney

### **A. Call to Order**

Judge Vocke called the meeting to order at 9:00 a.m.

### **B. Director's Report of Appropriate Meeting Notice**

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

### **C. Minutes of Previous Meeting**

#### **March 20, 2013 Meeting**

**MOTION:** Approve the Open Session minutes of the meeting of March 20, 2013.  
Moved by Judge Nichol, seconded by Judge Barland. Motion carried unanimously.

## **Board and Staff Recognitions**

Director Kennedy recognized Elections Specialist Steve Pickett, who will be retiring in July after 10 years as an employee of the State Elections Board and Government Accountability Board, and 22 years as Lafayette County Clerk.

Director Kennedy recognized Judge Thomas Cane, whose six-year term on the Government Accountability Board expired May 1, 2013. Judge Cane was the Board's first chair in 2007, and served as chair in 2008 and 2009. Judge Cane was also presented with a plaque.

### **D. Personal Appearances from Members of the Public**

**Mary Ann Hanson** of Brookfield appeared on her own behalf to discuss Agenda Item I, the Special Voting Deputy (SVD) Manual revisions since the Board's meeting in March. While she thanked the Board and staff for the revisions, she said she disagreed with sections of the manual instructing clerks not to remove voters from the permanent absentee list if they miss a primary election. She said that not everyone who lives in nursing home or a care facility is required to vote by SVD. She said the manual does not improve guidance on who can assist a voter, and she urged the Board to include guidance regarding giving residents and family members more notice about when SVDs will visit.

**Carol Boettcher** of Cedarburg appeared on her own behalf to discuss Agenda Item I, the SVD Manual revisions since the Board's meeting in March. She said there are problems with facility directors telling SVDs who can and cannot vote, rather than having SVDs speak directly to residents to find out if they wish to vote. She also expressed concerns about ballot security.

Discussion between Judge Vocke and Ms. Boettcher regarding facility directors' reactions to being told the SVDs need to speak with residents whose names are on the list. She said they became upset, and that the directors just wanted to save the SVDs time.

**Paul Malischke** of Madison appeared on his own behalf to discuss agenda Items G (ES&S voting equipment testing protocol) and H (Clerk Concerns Task Force report). He urged the Board not to include wireless communications in the testing protocol because of concerns it could compromise security. He said he agrees with all of the task force recommendations except #4 regarding the deadline to return absentee ballots by Election Day because it would lead to more ballots being rejected. He urged the Board to evaluate methods to simplify the post-election process for handling absentee ballots.

**Rock County Clerk Lori Stottler** of Janesville appeared on behalf of Rock County to discuss Agenda Item G, testing protocols for ES&S Unity 3.4.0.1. She said modems matter and timing is everything because her capital budget is due July 15. She urged the Board to consider both analog and digital modems for voting equipment.

**Steve Pearson** of Omaha, Nebraska, submitted an appearance on behalf of Elections Systems & Software to answer any questions about Agenda Item G, testing protocols for ES&S Unity 3.4.0.1.

**G. Proposed Process for Review of ES&S Voting System with Telecommunications Application**

(This item was taken out of order.)

Elections Supervisor Ross Hein and Elections Specialist Sherri Ann Charleston presented a verbal and written report located on page 29 of the Board meeting materials regarding the staff proposal for testing protocols for ES&S Unity 3.4.0.1, which has not been certified by the U.S. Election Assistance Commission. The underlying system, 3.4.0.0, was approved by the Board in March 2013, and staff has been developing testing protocols for the analog modem in 3.4.0.1, which Ms. Charleston presented to the Board for approval.

Discussion. Judge Brennan inquired about whether election workers can see the results before they are transmitted by modem, noting that many clerks can tell when numbers for a particular polling place are off. He was advised that there is a written print out of the vote totals that is reviewed by poll workers before transmittal.

Judge Cane inquired about the timing of the testing, which Ms. Charleston said would be before August.

Judge Deininger inquired about wireless modems and whether they would provide greater opportunities for tampering. Mr. Hein said wireless is the way technology will be moving in the future, and including it in the protocol would provide opportunities for innovation by equipment manufacturers. Any wireless testing would have to be pre-approved by the Board. Ms. Charleston said that if there were tampering, it would only be with unofficial results.

Judge Barland inquired about the wording of the first and second proposed motions, expressing concern that some language was superfluous. The Board and staff discussed alternate wording and arrived at minor changes that satisfied Judge Barland.

**MOTION:** Pursuant to authority granted in Wis. Stat. §5.91 and Wis. Adm. Code Ch. 7, and based upon the analysis and findings outlined in the May 21, 2013 staff memorandum, the Board adopts the testing procedures and standards pertaining to Modeming and Communication as detailed in the *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*. These testing protocols apply to non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG and any additional modeming component does not meet the 2005 VVSG.

**MOTION:** The Board directs staff (pursuant to a properly submitted Wisconsin application for approval) to test non-U.S. EAC certified voting systems, where the underlying voting system received U.S. EAC certification to either the 2002 or 2005 VVSG and any additional modeming component does not meet the 2005 VVSG, to the testing standards contained in the proposed *Voting System Standards, Testing Protocols and Procedures Pertaining to the Use of Communication Devices in Wisconsin*, which are attached.

**MOTION:** The Board clarifies that any modem hereafter approved for use in Wisconsin must have been tested to the requirements contained in the most recent version or versions of the Voluntary Voting System Guidelines (VVSG) or Voting System Standards (VSS) currently accepted for testing and certification by the U.S. Election Assistance Commission (EAC).

All three motions moved by Judge Cane, seconded by Judge Barland. Motions carried unanimously.

Division Administrator Michael Haas thanked the team that worked on the protocol, which also included Elections Specialists David Buerger and Jason Fischer, and Staff Counsel Shane Falk.

**F. Elections Division Report on Delivery of Ballots to Military and Overseas Voters**

(This agenda item was taken out of order.)

Division Administrator Haas introduced the item dealing with the final report submitted to the United States Department of Justice regarding delivery of absentee ballots to military and permanent overseas voters.

**MOTION:** Dispense with the oral presentation. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

**E. Formal Opinion Request on Open Meetings Requirements for Election Day Post-Election and Canvassing Procedures**

Director Kennedy made a verbal and written report. The Wisconsin Department of Justice has received requests for opinions about whether post-election procedures by election inspectors and boards of canvassers are subject to the Open Meetings Law. The DOJ has asked the Board to make the opinion request to ensure the question is correctly framed.

Discussion.

**MOTION:** Direct the Director and General Counsel to request a formal opinion of the Attorney General on the application of the state’s open meetings law to the post-election activity of election inspectors, employees and local election officials and boards of canvassers including the actions of the Government Accountability Board. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

## **H. Report on Clerks’ Concerns Task Force**

Division Administrator Haas introduced Elections Specialist David Buerger, who made a verbal and written presentation based on the work of the Clerks’ Election Workload Concerns Task Force, which was created in 2012 and has met three times. The staff is coming to the Board with several recommendations that came from the task force’s April 30 meeting.

### **Absentee Voting Procedures, Deadlines and Post-Election Day Acceptance**

Lead Elections Specialist Diane Lowe made a verbal and written presentation, stating that clerks have found that recent changes to election laws have made election administration more complex, labor intensive and costly. The task force made six recommendations:

#### **1. Electronic Transmission of Ballots**

Currently only military voters and overseas voters (U.S. citizen voters residing overseas with no present intent to return) are eligible to receive ballots by electronic transmission. Voters who are overseas temporarily may not receive ballots electronically.

**MOTION:** Accept the task force’s recommendation to permit electronic transmission of absentee ballots to all overseas voters who request it, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

#### **2. Elimination of Pre-paid Postage on Absentee Ballot Return Envelopes**

Except for ballots sent to military voters, municipal clerks are currently required to include return postage for any absentee ballot that will be returned from within the United States. Municipal clerks have observed a dramatic rise in postage costs due to the increased popularity of absentee voting. The task force also asserted that postage is “wasted” due to the number of ballots that are not returned to be counted, or that are sent by mail but returned to the clerk in person rather than by mail.

**MOTION:** Not adopt the task force’s recommendation to require voters to pay for return postage for their absentee ballots. Moved by Judge Cane, seconded by Judge Brennan. Motion carried unanimously.

#### **3. Absentee Ballot Request Deadlines**

Deadlines for requesting absentee ballots by mail vary depending on the type of voter. Generally, voters have until 5 p.m. on the Thursday before the election to request an absentee ballot by mail. Military and indefinitely confined voters have until 5 p.m. on the Friday before the election to request a ballot by mail. At federal elections, active duty military voters may request a ballot up to 5 p.m. on Election Day.

**MOTION:** Accept the task force's recommendation to standardize the deadline for by-mail absentee ballot requests by moving the deadline for both military and indefinitely confined voters to request an absentee ballot by mail from the Friday before the election to the Thursday before the election, and by moving the Election Day deadline for active military voters to request an absentee ballot for a federal election to the Thursday before the election, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Brennan, seconded by Judge Cane. Motion carried unanimously.

#### **4. Absentee Ballots Returned After Election Day**

Absentee ballots may be processed if postmarked no later than Election Day and received by the municipal clerk no later than 4 p.m. on the Friday after the election. This provision requires the Municipal Board of Canvassers to convene after the Friday deadline to process any late-arriving absentee ballots or to certify that no outstanding ballots were received timely. The task force recommended requiring all absentee ballots to be physically returned by 8 p.m. on Election Day.

Discussion. Judge Cane said he believes the Board should remain neutral on this subject.

**MOTION:** Direct staff to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

Judge Vocke called a brief recess at 10:50 a.m. The Board reconvened at 11:02 a.m.

#### **5. Validation of Provisional Ballots**

A provisional voter has until 4 p.m. on the Friday after the election to provide the missing information that caused him or her to vote provisionally in order for the ballot to be counted. The elements of 2011 Wisconsin Act 23 relating to the requirement to provide identification before receiving a ballot has been enjoined by two separate court orders. The task force recommended that for as long as the voter ID requirement is not in effect, the deadline for a voter to validate a provisional ballot shall be moved from 4 p.m. on the Friday after the election to 4 p.m. on the Wednesday after the election. If the voter ID requirement is in effect, the deadline for validating provisional ballots shall remain 4 p.m. on Friday after the election.

**MOTION:** Direct staff to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

**6. Elimination of Requirement for Signature of Witness on Absentee Certificate Envelope**

Wisconsin law requires the signature of a U.S. citizen witness on an absentee certificate envelope. Obtaining the signature of a U.S. citizen is frequently difficult for Wisconsin voters living in remote areas overseas. In addition, Wisconsin is one of only four states that require a witness signature on an absentee certificate envelope at all.

Discussion.

**MOTION:** Accept the staff recommendation to eliminate the requirement that the witness to absentee voting be a U.S. citizen, and direct staff to request that the Legislature act on the recommendation. Moved by Judge Deininger, seconded by Judge Cane. Motion carried unanimously.

**Tracking Absentee Information in SVRS**

Mr. Buerger introduced SVRS Functional Team Lead Sarah Whitt, who made a verbal and written presentation regarding the task force's recommendations regarding tracking absentee voters in the Statewide Voter Registration System. SVRS allows clerks to track absentee voters, but many clerks use their own systems because they do not have many absentee voters, or have usability issues with SVRS.

Staff developed seven recommendations, which the task force approved by a two-thirds vote, with one modification to the seventh. They are: 1) making improvements to absentee ballot tracking as part of SVRS modernization, 2) getting clerk input on changes, 3) customizing SVRS for absentee deadlines and mandates, 4) improving usability, 5) measuring success, 6) customizing functions for clerks, and 7) evaluating the changes and providing for adequate training before mandating absentee ballot tracking in SVRS. The full recommendations are listed on pages 72 and 73 of the Board Agenda Packet.

Director Kennedy said the staff would want separate Board approval before requiring clerks to track all absentee ballots using SVRS.

**MOTION:** Accept the task force recommendations on page 72 and 73 of the Board Agenda Packet, including the revisions to Recommendation 7, and direct Board staff to implement the recommendations. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

**Public Records Requests for Ballots**

Mr. Buerger discussed the task force's recommendation regarding the large number of public records requests clerks have been receiving in recent years to inspect voted ballots as part of citizen recounts. This has created a hardship on clerks, who must have staff present to protect the records being inspected. The task force recommended legislative change so that "Voted ballots should not be subject to inspection under the Public Records Law, but copying of ballots would remain permitted." Board staff recommends that the Board not take a position on this issue, but instead refer this recommendation to the Legislature, as it is the proper body to determine the balance of costs and burdens between a requestor and custodians of records.

**MOTION:** Accept the staff recommendation to refer this task force recommendation to the Legislature for its consideration without taking a position on the merits of the proposal. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

### **Annexation Notification**

Mr. Buerger introduced SVRS/GIS Analyst Zach Robinson, who prepared a written report. SVRS uses geographic information systems (GIS) technology to maintain voting district boundaries. When municipalities annex property which affects voting district boundaries, the G.A.B. does not always receive timely notice of the changes. The task force recommended that the G.A.B. be added to the list of state agencies required to be notified of annexations.

**MOTION:** Accept the task force's recommendation that the G.A.B. should be added to the list of state agencies which the Secretary of State is statutorily required to notify of completed annexations, and direct staff to request that the Legislature to act on the recommendation. Also, direct staff to continue to work with clerks to develop notification policies for annexations (municipal lines as they occur), amended ward plans, and a deadline for receipt of any shape files for updating SVRS prior to an election. Moved by Judge Barland, seconded by Judge Nichol. Motion carried unanimously.

## **I. Report on Special Voting Deputies in Nursing Homes and Care Facilities**

(This agenda item was taken out of order.)

Mr. Buerger presented a verbal and written report regarding revisions to the manual on Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities that have been made since the March 2013 Board Meeting, when Board members and the public commented on a draft changes to the manual proposed by staff. The revised manual begins on page 85 of the Board Agenda Packet.

Mr. Buerger said staff made further revisions, including enhanced definitions of the term "facility," which refers to specific licensed areas offering different levels of care within a



building or complex. Not all residents of a large building or complex need Special Voting Deputies to bring absentee ballots, as some residents live independently and can receive absentee ballots directly in the mail.

Discussion regarding concerns about whether a clerk should remove a voter from the permanent absentee list if he or she does not vote in a primary. The manual states that clerks should not remove a voter for failure to return a primary absentee ballot, while statutes specify a process of notification and removal if an elector fails to cast and return an absentee ballot. Judge Deininger noted that statutes do not specify a deadline by which the clerk must send out notifications, so a clerk could wait until the general election to see if the voter returned that absentee ballot. He also noted that the statutes should be cleaned up.

Discussion regarding concerns about multiple facilities in a building, providing assistance to voters, and providing notice to indefinitely confined voters and their families of SVD visits to care facilities.

**MOTION:** Approve the revised manual titled Absentee Voting in Nursing Homes, Retirement Homes and Adult Care Facilities. Moved by Judge Cane, seconded by Judge Deininger. Motion carried unanimously.

Director Kennedy asked whether the Board should consider asking the Legislature to require more than 24 hours' notice of SVD visits. Judge Vocke said that by consensus, the Board directs staff to ask the Legislature to change the notice requirement to seven days.

## **J. Legislative Status Report**

Elections Data Manager Brian Bell presented the report found on Page 110 of the Board's meeting materials.

Discussion of bills regarding how closely election observers may stand to election inspectors conducting voter registration and poll books and local recall elections.

## **K. Director's Report**

### **Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration**

Written report from Division Administrator Becker and Division staff was included beginning on Page 117 of the Board meeting packet.

### **Elections Division Report – election administration**

Written report from Division Administrator Haas and Division staff was included beginning on Page 121 of the Board packet.

### **Office of General Counsel Report – general administration**

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included beginning on Page 136 in the Board packet.

Discussion regarding possible dates for teleconference meetings prior to August 2013.

**MOTION:** Accept the Director's Report. Moved by Judge Cane, seconded by Judge Barland. Motion carried unanimously.

### **M. Closed Session**

Adjourn to closed session to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

**MOTION:** Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation, and to consider employment, promotion and performance evaluation data of a public employee of the Board. Moved by Judge Deininger, seconded by Judge Brennan.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously. The Board recessed at 12:05 p.m. for lunch and convened in closed session at 12:59 p.m.

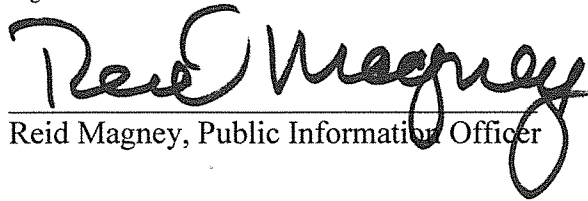
### **H. Adjourn**

The Board adjourned in closed session at 2:58 p.m.

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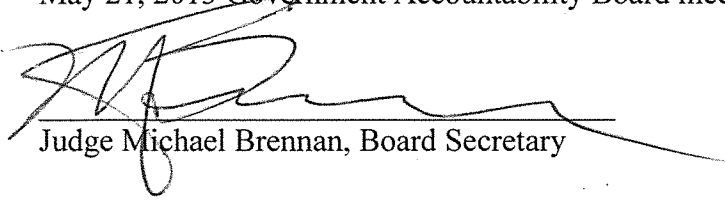
The next regular meeting of the Government Accountability Board is scheduled for Tuesday, August 13, 2013. The meeting will be held the Government Accountability Board office in Madison, Wisconsin beginning at 9 a.m.

May 21, 2013 Government Accountability Board meeting minutes prepared by:

  
Reid Magney, Public Information Officer

May 24, 2013

May 21, 2013 Government Accountability Board meeting minutes certified by:

  
Judge Michael Brennan, Board Secretary

August 13, 2013